



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 8, 1995

Mr. Jerry Bruce Cain  
Acting City Attorney  
City of Laredo  
P.O. Box 579  
Laredo, Texas 78042-0579

OR95-374

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32101.

The Laredo Police Department (the "department") received an open records request for documents regarding the records of arrests or convictions for two sheriff's deputies. Your letter indicates that you have considered whether sections 552.101, 552.103, and 552.108 of the Government Code apply to except the requested documents from production, and have concluded that they do not.

We have considered the exceptions you discuss and have reviewed the documents at issue. The Open Records Act places on a governmental body the burden of establishing why and how an exception applies to requested information. Open Records Decision Nos. 542 (1990), 532 (1989). In your letter, you state: "I do not find the Police Department records, as enclosed to be subject to any of these three (3) exceptions." You then set out in detail why you believe that sections 552.103 and 552.108 do not apply to these records. Therefore, we conclude that the city has not met its burden under the act and that the exceptions under sections 552.103 and 552.108 are waived.

However, we will address the applicability of section 552.101. Although the city has failed to show how the requested information is excepted under section 552.101, the Attorney General is authorized to raise this exception. Open Records Decision Nos. 481, 480, 470 (1987), 344, 325 (1982). Section 552.101 excepts from disclosure "information

deemed confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You have not cited any statute or judicial decision that would except the requested information from disclosure, and we are not aware of any statute or case authority other than those discussed herein that would except this information from disclosure.

Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The public has a legitimate interest in both criminal activity and the activities of law enforcement personnel. *See* Open Records Decision No. 208 (1978) at 2 (public's interest in activities of their police department is substantial). These crimes were allegedly committed by off-duty deputy sheriffs. We conclude that there is a legitimate public interest in charges against off-duty deputy sheriffs. Therefore, because common law privacy does not except the requested information from required public disclosure, you must release the records to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Government Section

SES/KHG/rho

Ref.: ID# 32101

Enclosures: Submitted documents

cc: Mr. Norman Jolly  
Attorney at Law  
1018 Preston, 4th Floor  
Houston, Texas 77002  
(w/o enclosures)